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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the European Centre for Law and Justice, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The right to life and to equality of persons with disabilities

The *European Centre for Law and Justice* is concerned about the protection of life and the equal treatment of people with disabilities. Two United Nations committees are currently drafting General Comments on this issue.

The Human Rights Committee, in charge of monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR, 1966) is drafting a General Comment on article 6 of the Covenant, the right to life. The United Nations' Committee on the Rights of Persons with Disabilities is writing a General Comment on Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD, 2006) regarding equality and non-discrimination.

While these General comments contain good points, they are departing from the original meaning and interpretation of the writers of the Covenants and put at risk the right to life of persons with disabilities by not recognizing this right or through discrimination.

I. The Human Rights Committee's interpretation of article 6 of the ICCPR

The UN Human Rights Committee is currently revising the definition of the "right to life" in international law. It contemplates imposing on every State the legalisation of abortion, of assisted suicide and of euthanasia, in the very name of the right to life (Paragraphs 9 & 10 of the draft).

The draft on general comment states that access to abortion is a right under Article 6 of the Covenant, even though it stipulates that *"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*

In doing so, the draft on general comment denies any protection to human life before birth and urges the 168 State Parties to the Covenant to legalise abortion on demand. The text gives no real condition or time limit to the "right" to access to abortion which should be available as soon as carrying the pregnancy "*would cause the woman substantial pain or suffering*", whether "*physical or mental*". Moreover, the draft condemns, without defining them, the requirements that States impose to legally access abortion insofar as they would be "*humiliating or unreasonably burdensome*". The draft also reckons that States have the obligation to ensure access for adolescents to the use of contraceptive methods as a means to better preserve the health of women against the risks caused by abortion.

In a previous version of 2015, the text recognized at least that States could adopt measures aiming at protecting the potential human life or the dignity of unborn children. Abortion was hence still a form of exception. But the majority of the committee decided in March 2016 to remove any reference to the child, reckoning, according to one of its members, that "*it did not appear necessary to mention the right to life of the foetus*", as if human life started but at birth!

This general comment is an obvious try to impose obligations that the majority of States have constantly refused. Even more, these new "obligations" are opposed to the text of the Covenant and the intention of the States that wrote and adopted it.

In 1947, the writers of the Universal Declaration of Human Rights (UDHR), of which the Covenant of 1966 is ensued, discussed the beginning of the right to life. While it was proposed to guarantee that *"Everyone has the right to life and physical integrity from the moment of conception regardless of his or her physical or mental condition"*, the People's Republic of China, supported by the United Kingdom and the USSR obtained that the practice of abortion be tolerated.[1] The Universal Declaration could then be interpreted as protecting, or not, life from conception, but never as imposing

1 Thomas Finegan, "International Human Rights Law and the "Unborn": Texts and Travaux Préparatories", Tulane Journal of International & Comparative Law, 2016, Vol. 25, Issue 1, p. 20;

the legalization of abortion. The Covenant incidentally prohibits death penalty for pregnant women out of respect for the life of the child.

There is a scientific agreement on the fact that each human life is a *continuum* that begins at conception and advances in stages until death.[2] The European Court of Human Rights (ECHR) found that *"it may be regarded as common ground between States that the embryo/fetus belongs to the human race"*[3] and that the *"potentiality of that being and its capacity to become a person (...) require protection in the name of human dignity"*.[4]

Accordingly, the Court of Justice of the European Union ruled that *"any human ovum must, as soon as fertilised, be regarded as a 'human embryo' (...) since that fertilisation is such as to commence the process of development of a human being"*.[5] Therefore, if the human being to be born belongs to the human race, he must benefit from the *"inherent dignity of all members of the human family"*.[6] Thus, to ignore the existence of the prenatal stage of any individual human life and to oblige States to legalize abortion in an extensive way result in denying humanity of every person before birth.

Since then, the majority of States has constantly rejected the Western attempts aiming at asserting the existence of a universal right to abortion, notably during the conferences on population, development and women in Cairo and Beijing.

The current draft on general comment is thus opposed to the intention of the writers of the Covenant, to the will of States and even to the letter of the treaty. It is also hardly compatible with numerous other international treaties.

This project is critical because it renounces to recognize the very **existence** of human life before birth, leaving it without protection towards abortion and all forms of manipulation and exploitation, notably biotechnological. This text shows a critical decline of the protection of the right to life. It says little or nothing about the protection of women who wish to give birth to their children, nor on infant health and even less on the obligation made to States to prevent the recourse to abortion.

II. The Committee on the Rights of Persons with Disabilities' interpretation of article 5 of the CRPD

The ECLJ acknowledges very good points in this draft Comment. The Committee is concerned by disability, hence condemns the forced sterilisations as well as mass euthanasia of disabled persons. It insists on the necessity to fight against stereotypes and stigmatisation of disabled persons, notably in the media where these persons are often presented as *"as sufferers and dependent objects of care without autonomy"*. The Committee also denounces the antenatal screening policies which aim at eliminating unborn children bearing a disability. The Committee declares that these policies *"go against the recognition of the equal worth of every person"*.

In these declarations, the Committee implicitly recognises the status of person of the unborn children and their right to life without discrimination. However, it forgets to explicitly state the right to life of disabled persons, born or unborn, which should yet be protected against any discrimination based on their handicap. There are no references in the Draft to this right, while it is guaranteed by Article 10 of the very same Convention. Moreover, the Committee does not mention eugenic abortion which it yet recently condemned as a discriminatory measure in an official document submitted to the Human Rights Committee of the United Nations. It had then declared that *"laws which explicitly allow*

2 See San Jose Articles, Articles 1 and 2; Sadler, T.W. Langman's Medical Embryology, 7th edition. Baltimore: Williams & Wilkins 1995, p. 3.

3 ECHR, *Vo v. France*, No. 53924/00, [GC], 8 July 2004, § 84.

4 *Idem*.

5 Court of Justice of the European Union (Grand Chamber), 18 October 2011, C-34/10 *Oliver Brüstle / Greenpeace eV*, § 35.

6 Preamble of the Universal Declaration of Human Rights. See also San Jose Articles, Article 4.

for abortion on grounds of impairment violate the Convention on the Rights of Persons with Disabilities (Art. 4, 5, 8)." It further explained that these kind of abortion is often based on false diagnoses and that, "*Even if it is not false, the assessment perpetuates notions of stereotyping disability as incompatible with a good life.*"7

The ECLJ was rejoiced of such a positioning going in the sense of its numerous interventions before the Human Rights Council. Dignity is inherent to every human being, regardless of his health condition.

III. Recommendations

The ECLJ recommends the Human Rights Council to call on States to prevent coerced abortions resulting from medical and social pressure on women pregnant with a disabled child.

Finally, the ECLJ recommends the Human Rights Council and States to guarantee the right to life of disabled persons before as well as after birth, by condemning eugenic abortion and to encourage research on disabilities rather than trying to eliminate those affected.

7 CRPD, *Comments on the draft General Comment No36 of the Human Rights Committee on article 6 of the ICCPR*, 6 October 2017.